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NSC-D/LOS

MEMORANDUM

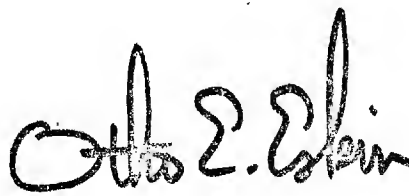
June 11, 1975

MEMORANDUM

TO : Members of the LOS Executive Group

SUBJECT : Pinto Single Text and Comparative Table of
Engo and Pinto Single Text

Attached for your information is a clean
copy of the Pinto Text of May 3 and a Comparative
Table of the Engo and Pinto texts prepared by
Rebecca Wright.



Otho E. Eskin
Staff Director

Attachment

As stated.

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United States Department of the Interior

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OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

June 10, 1975

MEMORANDUM

To: Leigh Ratiner
From: Rebecca Wright *RW*
Subject: Important Differences in the Engo and Pinto
Single Texts

Summarized below are significant differences between the Engo and Pinto versions of a Committee I unified negotiating text. There are numerous variations throughout the two texts in language and content which are not included in this listing, since a more detailed analysis of each text, on an article-by-article basis, will be prepared within the next week.

Engo

Pinto

Restricting the Authority's Mandate to Exploration & Exploitation Activities:

1. Definition of "activities in the Area," a phrase used throughout the text, includes exploration, exploitation and other "associated" activities, including scientific research.*

Definition of "activities in the Area" is similar to Engo text, but "associated" activities includes only "research concerning resources." (Pure or basic scientific research is thus excluded from this definition.)

*Engo's definition of "activities" includes only those associated activities "in the Area", technically excluding transportation, processing and marketing. This may be a drafting error -- although it is desirable

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2. The Authority "administers the Area," manages its resources and "controls the activities of the Area"; under this provision, the Authority's mandate extends beyond exploitation-related activities, since "administering the Area" refers to a territorial rather than functional concept (moreover, "the activities of the Area" is a different formulation than the frequently used "activities in the Area").

The Authority "administers and manages resources"; this formulation restricts Authority's mandate exclusively to resource-related activities and does not have a territorial implication.

3. The Area is open to use by all States Parties in accordance with the convention and rules and regulations (since the permissible subject matters for rule-making are not restricted, it is conceivable that the Authority might attempt to adopt regulations on non-resource activities).

The Area is open to use in accordance with the convention. There is no reference to rules and regulations. (Even if there was such a reference the permissible subjects for rule making are specifically set forth in another article.)

4. The Authority has jurisdiction over all wrecks in the Area over 50 years old; this provision might affect the international law of salvage.

No similar provision appears.

Scientific Research:

5. The Authority is the "center for harmonizing and coordinating scientific research;" States are obligated to promote international cooperation in scientific research through a variety of measures, including effective publication of research programs and dissemination of their results through the Authority.

Research concerning resources is subject to certification by the Authority only as to the competence of entities and to a nonspecific obligation to notify the Authority and disseminate results through international channels. The obligations on States concern research relevant to resources; all other research is unregulated.

Restricting the Assembly's Powers:

6. The Assembly issues general policy directions to the Council and the Council is required to "act in a manner consistent with general guidelines and policy directions laid down by the Assembly."

The Assembly issues general policy directions to the Council but no provision appears that requires the Council to follow them. (See also paragraph 7 below.)

7. The Assembly is the supreme policy-making organ and is not prohibited from interfering in the functions of other organs.

While the Assembly is the supreme policy-making organ, all of the Authority's organs are required to avoid actions that interfere with the exercise by other organs of their specific powers; also a provision specifically conferring upon the Council the power to determine policies with respect to activities in the Area results in the Assembly's having little power to set exploitation policies.
- 8.. Assembly substantive decisions are taken by a 2/3 vote of those present and voting, provided that this includes a majority of the members.

Decisions are taken by the same majority, but can only be taken after a determination is made (by the same majority) that "reasonable efforts have been made to reach general agreement
9. An Assembly action can be deferred if one-third of the members request an advisory opinion of the Tribunal on a related legal question; if the opinion is not delivered within six months, the Assembly may act.

The same procedure applies, but is activated by one-fourth, rather than one-third, of the Assembly's members. Moreover, the Tribunal is required to deliver its opinion within six months.
10. The listing of the Assembly powers is not exhaustive: "the powers and functions of the Assembly shall include:"

The listing is exhaustive: "the powers and functions shall be:"
11. The Assembly is empowered to discuss any matter within the scope of the convention.

In addition, the Assembly is specifically entrusted with examining plans and recommendations of the Council for protecting land-based producers and for preferential access of LDC importers; it has only recommendatory powers on these issues, however.

Assuring U.S. influence in the Council:

12. The 36-member Council has 12 reserved seats, 6 of which are allocated to countries with substantial investments in exploitation or advanced technology being used for exploitation, as well as major importers of land-based minerals; these 6 seats are not restricted to industrialized countries and will not necessarily be allocated to the 6 countries that have made the greatest contribution in these fields; moreover, assuming the U.S. becomes a major seabed producer, it may not be a "major importer of land-based minerals."

13. The 24 elected Council seats are to be equitably distributed among the traditional 5 regions; roughly, the Council would then be composed of 23 LDC's and 13 developed countries.

14. Council decisions on substance would be made by a 2/3 vote plus one of those present and voting; thus, abstentions by other industrialized countries could make it more difficult to block decisions; if there were no abstentions, it would take 12 votes to block a decision.

The 36-member Council has 12 reserved seats, 9 of which are allocated to the most industrialized countries which have made the greatest contribution to exploitation in terms of investments and technology; under this approach the U.S. is assured a seat for the foreseeable future.

Council seats are distributed equitably among 10 regional areas, with an unspecified minimum of seats being allocated to each area; under this approach, the split between LDC's and developed countries would be similar to that in the Engo text. (But see paragraph 14 below)

Council decisions on substance would be made by a 3/4 vote of those present and voting, provided this included a majority of members; abstentions by other industrialized countries would thus not be as serious; if there were no abstentions, it would take 10 votes to block a decision; moreover, decisions could only be taken following a 3/4 vote determination that reasonable efforts had been made to reach general agreement.

Economic Decisions:

15. Resource policies are to be guided by the principle of "fostering healthy development of the world economy and a balanced growth in international trade," as well as the principle of avoiding or minimizing adverse effects on the economies of developing countries caused by a substantial decline in their export earnings from minerals also derived from the seabed.

16. The Council takes decisions on measures to protect land-based producers only on the recommendation of the Economic Planning Commission; the composition of the Planning Commission is based on geographic representation and competence; its decisions require a 2/3 vote.

17. Among the measures to be considered by the Economic Planning Commission, integrated commodity agreements and buffer stock arrangements are specifically mentioned.

18. Any land-based producer, both developed and developing, may bring a complaint before the Commission in relation to a situation likely to lead to a substantial decline in its mineral export earnings.

Resource policies are not required to meet the standard of fostering balanced growth in the world economy and international trade, but are required to be designed to avoid or minimize the adverse economic effects for developing countries of a substantial decline in their export earnings which is caused by seabed production.

Council action in this area also depends on a recommendation by the Planning Commission: the composition of this commission must include a balance between net exporters and net importers; its decisions require a majority in each category and a 2/3 majority of the whole commission.

The Economic Planning Commission is charged with considering "appropriate measures."

Only developing country land-based producers who have substantial evidence that a situation will lead to a serious and harmful decline in their export earnings may bring a complaint before the Commission.

Compulsory Dispute Settlement:

19. The Tribunal's jurisdiction includes disputes regarding the convention's interpretation and disputes submitted pursuant to a contract; thus, the Authority can negotiate contracts that do not grant jurisdiction to the Tribunal;

The Tribunal has jurisdiction over disputes regarding the interpretation of the deep seabed part of the convention relating to "activities in the Area" and disputes concerning all contracts; the Authority cannot contract out of the Tribunal's jurisdiction;

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| 20. The Tribunal's jurisdiction is not restricted to disputes relating to "activities in the Area." | The Tribunal's jurisdiction is restricted to "activities in the Area." |
| 21. All disputes must be submitted to conciliation, etc., for one month prior to submission to binding dispute settlement; this delays prompt resolution of commercial disputes. | Only disputes between State Parties must be submitted to conciliation as a first step. |
| 22. If the parties to any dispute agree, they may utilize an arbitration procedure, or any other procedure rather than the Tribunal; this permits the Authority and a contractor to opt out of the Tribunal's jurisdiction either in collusion or by pressure from the Authority derived from its bargaining leverage in contract negotiations. | Only disputes between State Parties that do not involve a contract can be submitted to non-binding procedures; if such disputes involve a contract they can be submitted to an arbitration procedure, rather than the Tribunal if both parties desire. |

Procedural Safeguards in the Exercise of Regulatory Functions:

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| 23. The Council adopts rules on the recommendation of the Technical Commission. These rules may cover any subject within the mandate of the Council. Rules become effective on Council approval without reference to member States at large. | The Council approves rules on the recommendation of the Technical Commission, but such rules do not become effective until two-thirds of the member States indicate their tacit approval. The subjects of rules are limited to those specifically listed. The Assembly has no role in the rule-making process. |
| 24. The Secretariat carries out the Authority's inspection function. | A Secretariat staff of inspectors falls under the supervision of the Operations Commission and thus the Council. |
| 25. Inspectors have access at <u>all times</u> to all places, data and persons. | Inspectors only have access to <u>all data concerning activities in the Area</u> and to any <u>policy officer</u> . |
| 26. The Authority regulates all installations for the conduct of activities in the Area. | The Authority only regulates installations for the conduct of activities which are located on the seabed. |

Provisions Related to the Basic Conditions:

27. The Authority directly exploits and may enter into contracts; only the first 10 joint venture contracts are subject to the basic conditions.
- When the Authority directly exploits or enters into contracts, it must act in accordance with the basic conditions; all activities in the Area are subject to the basic conditions.
28. The Enterprise functions in accordance with its Statute and the provisions of the Convention.
- The Enterprise functions in accordance with its Statute, and the provisions of the Convention, including the basic conditions, and Authority's rules and regulations and cannot take actions without Council approval in each case.
29. States acquire rights to the minerals "only in accordance with the provisions" of the convention; thus, the convention, or the basic conditions, must specifically provide for transfer of title to the operator.
- No State shall acquire rights to the minerals "inconsistent with this convention."
30. The Authority is empowered to reserve areas for its own use.
- This power is not specifically entrusted to the Authority.
31. The Council is not expressly empowered to open areas.
- The Council is expressly empowered to open areas.

Financial Provisions:

32. State contributions may be required indefinitely and may be used to meet any of the Authority's expenses including deficits of the Enterprise.
- State contributions shall only be used to meet administrative expenses of the Authority until it has sufficient revenues for this purpose.
33. The Assembly is empowered to assess State contributions to the Authority.
- The Assembly has this power, but must use the UN general assessment scale.
34. There is no provision prohibiting national taxation.
- Such a provision is mentioned, although the substantive content is left blank.

Miscellaneous:

35. States are required to promote programs for the promotion of technology transfer, including facilitating LDC access to patented and non-patented technology under just and reasonable conditions.

States are required to promote programs for the transfer of technology, including facilitating LDC and technologically less advanced countries' access to all technology relevant to activities in the Area, under preferential terms and on just and reasonable conditions.

36. The Authority is required to consult with coastal States when resources lie astride their seabed boundaries.

Consultations must occur with coastal States which are in the region of exploration and exploitation activities.

37. States and international organizations are liable for damage caused by activities in the Area under their jurisdiction.

Liability for damage is unspecified.

38. There is no provision for the adoption of regulations for the provisional period.

Provisional rules adopted by the LOS Conference shall apply until new rules are promulgated by the Authority.